

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matter of)	
)	
Performance Measurements and Standards)	CC Docket No. 01-318
for Unbundled Network Elements and)	
Interconnection)	
)	
Performance Measurements and Reporting)	CC Docket No. 98-56
Requirements for Operations Support)	
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association for Local)	CC Docket Nos. 98-147, 96-98, 98-
Telecommunications Services for)	141
Declaratory Ruling)	

**COMMENTS OF THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI**

The Public Service Commission of the State of Missouri (“MoPSC”) offers the following comments in response to the Federal Communication Commission’s (“Commission”) Notice of Proposed Rulemaking (NPRM) released November 19, 2001 in the above docketed case. By this NPRM, the Commission seeks comment on whether it should adopt a select group of measurements and standards for evaluating incumbent local exchange carrier (ILEC) performance in the provisioning of facilities that are used by their carrier-customers to compete for end-user customers. These measurements and standards apply to key aspects of pre-ordering, ordering, provisioning and maintaining those facilities and services that are critically important to ensuring competitive local exchange carriers (CLECs) can enter the local exchange market. The Commission also seeks comment on enforcement policies and guidelines appropriate to the promulgation of national measurements and standards.

At paragraph 26 of the NPRM, the Commission states, “Uniform, national performance measurements may make much more transparent the extent to which an incumbent LEC is providing nondiscriminatory access [to pre-ordering, ordering, provisioning and on-going maintenance and repair services].” In the same paragraph, the Commission recognizes that one of the goals of the Telecommunications Act of 1996 (Act) is to eliminate or avoid unnecessary, duplicative or otherwise burdensome regulation. Thus, the Commission seeks comment on the balance between benefits and burdens associated with national performance measurements.

Performance measurements are an important tool in assessing a competitor’s ability to gain nondiscriminatory access to the ILEC network, thus further promoting competition as contemplated by Congress and the Act. Although performance measurements predominately apply to certain Regional Bell Operating Companies (RBOCs) and other large ILECS, it may also be appropriate to apply similar standards to all ILECs. As discussed below, the MoPSC would suggest the benefits of performance measurements, whether national, regional or state-specific, far outweigh any burdens imposed by the associated regulation of those measurements.

The MoPSC participates in a collaborative monitoring process with the Texas, Kansas, Oklahoma, and Arkansas Commissions to monitor the Southwestern Bell Telephone Company performance measurements implemented in the southwest region. This collaborative monitoring process consists of bi-annual reviews of the performance measurements established for the region to determine what measures should be modified, added or eliminated to provide efficient and effective service between the retail service provider (i.e., the competitor) and the wholesale provider (i.e., the ILEC). The process provides a forum for the five commissions and the industry to discuss extremely technical issues on service provisioning. The proceeding encourages open discussion and creates a record via transcripts.

The process allows for individual state direction while maintaining consistency through a more global perspective among states with common systems.

This open forum has been successful at the regional level where all states participate in reviewing, both individually and collectively, the performance measurements of a common ILEC. Although an open forum may not be feasible on a national level, the MoPSC recommends a federal/state collaborative effort for ensuring nondiscriminatory access to all ILEC networks. The federal/state collaborative would also provide an avenue for consistency among states. However, the MoPSC respectfully asserts that it is imperative that this joint effort serve to augment, not supersede individual state or regional efforts.

In addition, the MoPSC encourages the FCC to adopt a data validation and audit requirement for any national performance measurements. It is important to recognize that performance measurement results convey data reflecting millions of separate transactions. The data associated with any given transaction can be collected from among a multitude of sources that may be either mechanical (e.g., a computerized information system) or manual (e.g., a service representative's or plant technician's input). Even where the source of the data is mechanical, manual effort is utilized to ensure that the mechanical process is properly programmed and otherwise able to capture the correct data. Thus, both mechanical and manual processes contribute to the calculation and posting of performance results.

As part of the MoPSC's review of SWBT's 271 application, the MoPSC selected the firm of Ernst & Young to conduct a rigorous examination and analysis of the Missouri performance measurement data, algorithms, and calculations, and the underlying data collection methodology (collectively "validation") employed by SWBT. The audit was specifically geared toward validating the accuracy and reliability of SWBT's performance data.

Ernst & Young performed procedures necessary to evaluate and validate the data collection processes used by SWBT in reporting on its performance measures for Missouri. Ernst and Young also focused on whether the process SWBT uses to collect data in measuring its performance is reasonably accurate and in accordance with the business rule criteria associated with the respective performance measure.

Specifically, Ernst & Young's examination covered three (3) major specific areas.

Performance Measure Review

- Identify significant applications, map process flows, and document activity dictionaries (narratives of process flows).
- Perform recalculations of selected PMs and compare against results posted by SWBT on the CLEC reporting website.
- Perform code review of selected PMs to determine appropriateness of inclusions, exclusions, and interpretations.
- Perform an analytical review for selected PMs under review.

General Controls Review

- Assess the general and information technology control environment surrounding PMs and the OSS capturing transactions utilized in generating PMs.

Application Control Testing on Significant Systems

- Perform transaction testing to verify the integrity of data flows within and between OSS's to PM reporting systems.
- Perform testing to validate application and data input processing controls and field level controls within the applications.
- Perform user access testing to tables/logs that have PM data including access to applications.
- Perform on-site walkthroughs of critical processes and observe technician data inputs specific to selected PMs.

In order to rely on the performance measurement data, it is essential that an objective, independent validation is performed to ensure the ILEC's processes and reporting complies with any

business rules. The MoPSC recommends the Commission adopt an independent data validation requirement that would at a minimum include the three (3) specific areas listed above.

The Ernst & Young review discussed above totaled nearly 8,000 person hours of work. This included field visits to the Local Service Center, the Local Operations Center, ride days with SWBT technicians and extensive meetings with SWBT's programmers. State commissions do not have the resources or expertise to conduct these types of audits. The MoPSC recommends that independent third-party firms be contracted to conduct independent validations of performance measurements to ensure that an ILEC's processes and reporting complies with any national standards. To ensure independence, the third-party firm must agree not to perform subsequent work for the ILEC for a period of one-year following the completion of the audit without approval of the Commission. Oversight of the third-party firm would be the responsibility of a joint federal/state audit team, independent of industry participation.

While this process was very effective in assessing performance measurement data for RBOCs, the MoPSC recognizes that an independent third party audit as utilized in the Missouri 271 proceeding can be extremely resource intensive. While RBOCs have the incentive of submitting to the audit to obtain 271 authority, other ILECs will not have similar incentives for participating in such demanding performance measurement and audit processes. Therefore, it may be necessary to group ILECs in categories such as size, number of access lines, rural versus non-rural, etc. with audit procedures appropriate to that category. The MoPSC recommends that the joint federal/state audit team be delegated the authority to determine the appropriate categorization of the ILECs. This joint federal/state team should be charged with the responsibility of establishing performance measurement standards and the associated audit mechanisms applicable to each group of ILECs.

Once standards are in place and an audit mechanism is established, enforcement mechanisms must be employed. The Commission requests comment at paragraph 22 as to whether and to what extent it “should exercise the full panoply of enforcement mechanisms available to it under the Act to enforce any national measurements and standards.” The MoPSC contends the Commission should exercise all enforcement mechanisms to the extent allowed under the Act. A self-effectuating liquidation has proven to be an effective means of enforcement in several states, including Missouri, for failure to comply with standards. The self-effectuating methodology provides for automatic payments to competitors and states, without state commissions, or the Commission in the case of national standards and enforcement, issuing an order directing payment. However, once again, the MoPSC would stress that any national enforcement mechanisms should not preempt state enforcement processes or penalties established as part of the 271 review or other proceeding.

Finally, in paragraph 18, the Commission seeks comment on “whether and how state and federal performance requirements could be harmonized and potentially streamlined through adoption of national measurements and standards.” As stated repeatedly, the MoPSC urges the Commission to develop standards that augment state and/or regional performance measurements, and not preempt state and/or regional standards. Any order adopting national performance measurements should be clear in its objective of providing a standardized list of performance measurements for those states that choose to enforce the national list or have not adopted their own standards; thus, removing any opportunity for ILECs to argue federal preemption over state and/or regional performance measurements.

In summary, the MoPSC suggests that performance measurements provide great benefit in ensuring nondiscriminatory access to ILEC networks. Therefore, it may be beneficial to extend these performance measures, in some form or degree, to all ILECs. Further, the Commission should

adopt a data validation and audit requirement through the collaborative efforts of a joint federal/state audit team. This joint federal/state audit team would be responsible for establishing the appropriate level of performance measurement standards and associated audit mechanisms applicable to the various ILECs. In order to maximize benefits of the performance measurements, the MoPSC recommends the Commission exercise all available enforcement mechanisms allowed under the Act and suggests a self-effectuating payment structure as an efficient and effective methodology to employ. Finally, whatever standards the Commission ultimately determines are appropriate to measure performance requirements, the MoPSC respectfully encourages the Commission to clearly document that those standards in no way preempt state and/or regional performance measurements.

Respectfully submitted,

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